

Assembly Bill No. 2251

Passed the Assembly August 31, 2016

Chief Clerk of the Assembly

Passed the Senate August 29, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Division 12.5 (commencing with Section 28100) to the Financial Code, relating to student loan servicers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2251, Mark Stone. Student loan servicers: licensing and regulation: Student Loan Servicing Act.

(1) Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight, who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses, including, but not limited to, the business of making consumer or commercial loans.

This bill would enact the Student Loan Servicing Act providing for the licensure, regulation, and oversight of student loan servicers by the commissioner and would define terms for its purposes. The bill would prohibit a person from engaging in the business of servicing a student loan in this state, directly or indirectly, without a license, unless exempt from the licensing requirement, and would require a licensee to provide specific services to a student loan borrower and comply with reporting, auditing, and other oversight by the commissioner. The bill would require a person applying for a license to, among other things, pay an application fee, sign the application under penalty of perjury, and submit to a criminal background check by the Department of Justice. By expanding the scope of the crime of perjury and increasing who is authorized to receive criminal record information, this bill would impose a state-mandated local program. The bill would require each licensee to, among other things, file reports with the commissioner under oath, pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of these provisions, as estimated by the commissioner, and would authorize the commissioner to enforce these provisions by, among other things, promulgating regulations, performing investigations, suspending a license, and enforcing the provisions in an administrative hearing or in court, as specified. The bill would prohibit the public disclosure of specific information provided by

a licensee to the commissioner. The bill would make the act operative on July 1, 2018, except for specific authorizations to the commissioner which may be exercised on and after January 1, 2017. The bill would make legislative findings in support of its provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Student loan debt is a national crisis. More than 40,000,000 individuals in the United States owe some amount of student loan debt. Total student loan debt in the United States currently exceeds \$1.2 trillion, surpassing both the amount of credit card debt and car loans. With college costs continuing to rise, student loan debt continues to rise, and there is no reduction in sight.

(b) While California's financial aid programs are some of the strongest in the nation and our state's college graduates have among the lowest student loan debt burdens, California students and graduates still incur significant debt. According to the Institute for College Access & Success, 55 percent of California's graduating class of 2014 has student loan debt. According to the United States Department of Education, as of January 2015, there are approximately 4,156,000 student loan borrowers in California, and the total student loan debt outstanding for Californians is approximately \$1.2 billion.

(c) Student loan debt is a hindrance on the state's economy, preventing borrowers from achieving financial independence, buying property, and starting businesses.

(d) Student loan servicers administer student loans, serving as a critical link between borrowers and lenders in managing accounts, processing payments, and communicating directly with borrowers. Despite this critical relationship, according to the federal Consumer Financial Protection Bureau (CFPB), there are no consistent, marketwide federal standards for student loan servicing.

(e) The CFPB released a report in September 2015 that found that student loan borrowers encounter servicers that discourage borrower-friendly alternative payment plans, fail to respond to questions and payment processing errors, and fail to provide sufficient information to borrowers regarding payments, benefits, interest rates, and other charges.

(f) It is the intent of the Legislature to promote all of the following:

(1) Meaningful access to federal affordable repayment and loan forgiveness benefits.

(2) Reliable information about student loans and loan repayment options.

(3) Quality customer service and fair treatment.

SEC. 2. Division 12.5 (commencing with Section 28100) is added to the Financial Code, to read:

DIVISION 12.5. STUDENT LOAN SERVICING ACT

CHAPTER 1. GENERAL PROVISIONS

Article 1. Short Title

28100. This division may be known and cited as the "Student Loan Servicing Act."

Article 2. Requirement for License

28102. (a) No person shall engage in the business of servicing a student loan in this state, directly or indirectly, without first obtaining a license pursuant to this division. A license shall not be transferable or assignable.

(b) This division shall not apply to any of the following:

(1) A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.

(2) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.

(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A public postsecondary educational institution or a private nonprofit postsecondary educational institution servicing a student loan it extended to the borrower.

(5) A nonprofit community service organization that meets all the criteria of Section 12104.

(c) A private postsecondary educational institution not exempted from the requirements of this division pursuant to subdivision (b) shall not be required to comply with this division for the servicing of a student loan it extended to a borrower that a licensee is servicing pursuant to a servicing agreement with the private postsecondary educational institution for that student loan.

Article 3. Definitions

28104. For the purposes of this division, the following terms have the following meanings:

(a) “Applicant” means a person applying for a license pursuant to this division.

(b) “Borrower” means either of the following:

(1) A person who has received or agreed to pay a student loan.

(2) A person who shares responsibility for repaying a student loan with a person described in paragraph (1).

(c) “Commissioner” means the Commissioner of Business Oversight.

(d) “Department” means the Department of Business Oversight.

(e) “Engage in the business” means, without limitation, servicing student loans.

(f) “In this state” means any activity of a person relating to servicing student loans that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state.

(g) “Licensee” means a person licensed pursuant to this division.

(h) “Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust, an unincorporated organization, a government, or a political subdivision of a government, and any other entity.

(i) “Qualified written request” means a written correspondence made by a borrower, other than notice on a payment medium supplied by a licensee, that is transmitted by mail, facsimile, or electronically through an email address or Internet Web site designated by the licensee to receive communications from a borrower that does all of the following:

(1) Enables the licensee to identify the name and account of the borrower.

(2) Includes a statement of the reasons for the belief by the borrower, to the extent applicable, that the account is in error or that provides sufficient detail to the servicer regarding information sought by the borrower, such as a complete payment history for the loan or the borrower’s account, a copy of the borrower’s student loan promissory note, or the contact information for the creditor to whom the borrower’s student loan is owed.

(j) “Servicing” means any of the following activities related to a student loan of a borrower:

(1) Performing both of the following:

(A) Receiving any scheduled periodic payments from a borrower or any notification that a borrower made a scheduled periodic payment.

(B) Applying payments to the borrower’s account pursuant to the terms of the student loan or the contract governing the servicing.

(2) During a period when no payment is required on a student loan, performing both of the following:

(A) Maintaining account records for the student loan.

(B) Communicating with the borrower regarding the student loan on behalf of the owner of the student loan promissory note.

(3) Interacting with a borrower related to that borrower's student loan, with the goal of helping the borrower avoid default on his or her student loan or facilitating the activities described in paragraph (1) or (2).

(k) (1) "Student loan" means any loan primarily for use to finance a postsecondary education and costs of attendance at a postsecondary institution, including, but not limited to, tuition, fees, books and supplies, room and board, transportation, and miscellaneous personal expenses. A "student loan" includes a loan made to refinance a student loan.

(2) (A) A "student loan" shall not include an extension of credit under an open-end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling.

(B) A "student loan" shall not include an extension of credit made by a postsecondary educational institution to a borrower if one of the following apply:

(i) The term of the extension of credit is no longer than the borrower's education program.

(ii) The remaining, unpaid principal balance of the extension of credit is less than \$1,500 at the time of the borrower's graduation or completion of the program.

(iii) The borrower fails to graduate or successfully complete his or her education program and has a balance due at the time of his or her disenrollment from the postsecondary institution.

(l) "Student loan servicer" means any person engaged in the business of servicing student loans.

CHAPTER 2. LICENSING

Article 1. Commissioner of Business Oversight

28106. (a) The commissioner shall administer the provisions of this division and may promulgate rules and regulations and issue orders consistent with that authority.

(b) Without limitation, the functions, powers, and duties of the commissioner include all of the following:

(1) To issue or refuse to issue a license as provided by this division.

(2) To revoke or suspend for cause any license as provided by this division.

(3) To keep records of licenses issued under this division.

(4) To receive, consider, investigate, and act upon complaints made in connection with a licensee.

(5) To prescribe the forms of and receive (A) applications for licenses and (B) reports, books, and records required to be made by a licensee under this division, including annual audited financial statements.

(6) To subpoena documents and witnesses and compel their attendance and production, to administer oaths, and to require the production of books, papers, or other materials relevant to any inquiry authorized by this division.

(7) To require information with regard to an applicant that the commissioner may deem necessary, with regard for the paramount public interest in ascertaining the experience, background, honesty, truthfulness, integrity, and competency of an applicant for servicing student loans, and if an applicant is an entity other than an individual, in ascertaining the honesty, truthfulness, integrity, and competency of an officer or director of the corporation, association, or other entity, or the members of a partnership.

(8) To enforce by order any provision of this division.

(9) To levy fees, fines, and charges in an amount sufficient to cover the cost of the services performed in administering this division.

(10) To appoint examiners, attorneys, supervisors, experts, and special assistants as needed to effectively and efficiently administer this division.

28108. (a) The commissioner shall have the authority to conduct investigations and examinations of an applicant or licensee as follows:

(1) For purposes of determining whether an applicant is eligible for a license, or that a licensee is complying with the provisions of this division or any regulation or order of the commissioner, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, any of the following relating to the intent to, or the practice of, servicing student loans for borrowers:

(A) Criminal, civil, and administrative history information.

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency.

(C) Any other documents, information, or evidence that the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of those documents, information, or evidence.

(2) For the purposes of investigating violations or complaints arising under this division, the commissioner may direct, subpoena, or order the attendance of, and examine under oath, any person whose testimony may be required about the student loan or account of the borrower.

(b) In making any examination or investigation authorized by this section, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of a licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this division, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

28110. (a) Notwithstanding any other law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section shall not be deemed to require the commissioner to accept electronic records or electronic signatures.

(b) For purposes of this section, the following terms have the following meanings:

(1) “Electronic record” means an initial license application, or material modification of that license application, and any other record created, generated, sent, communicated, received, or stored by electronic means. “Electronic records” also includes, but is not limited to, all of the following:

(A) An application, amendment, supplement, and exhibit, filed for any license, consent, or other authority.

(B) A financial statement, report, or advertising.

(C) An order, license, consent, or other authority.

(D) A notice of public hearing, accusation, and statement of issues in connection with any application, license, consent, or other authority.

(E) A proposed decision of a hearing officer and a decision of the commissioner.

(F) The transcripts of a hearing and correspondence between a party and the commissioner directly relating to the record.

(G) A release, newsletter, interpretive opinion, determination, or specific ruling.

(H) Correspondence between a party and the commissioner directly relating to any document listed in subparagraphs (A) to (G), inclusive.

(2) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(c) The Legislature finds and declares that the Department of Business Oversight has continuously implemented methods to accept records filed electronically, and is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal.

Article 2. Application for License

28112. An applicant shall apply for a license by submitting all of the following to the commissioner:

(a) A completed application for a license in a form prescribed by the commissioner and signed under penalty of perjury.

(b) The sum of one hundred dollars (\$100) as a fee for investigating the application, plus the cost of fingerprint processing and the criminal history record check under Section 28116, and three hundred dollars (\$300) as an application fee. The investigation fee, including the amount for the criminal history record check, and the application fee are not refundable if an application is denied or withdrawn.

(c) Audited financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least two hundred fifty thousand dollars (\$250,000).

28114. (a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of every applicant for a license for purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the commissioner.

(c) The Department of Justice shall provide a response to the commissioner pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The commissioner shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for the license applicant described in subdivision (a).

(e) The Department of Justice shall charge a fee, payable by the applicant, sufficient to cover the costs of processing the requests pursuant to this section.

28116. (a) Upon the filing of an application for a license pursuant to Section 28112 and the payment of the fees, the commissioner shall investigate the applicant and its general partners and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any person responsible for the conduct of the applicant's servicing activities in this state, if the applicant is a partnership. If the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, managing members, and individuals owning or controlling, directly or

indirectly, 10 percent or more of the outstanding equity securities or any person responsible for the conduct of the applicant's servicing activities in this state.

(b) Upon the filing of an application for a license pursuant to Section 28126 and the payment of the fees, the commissioner shall investigate the person responsible for the servicing activity of the licensee at the new location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division. If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial, the commissioner shall issue and deliver a license to the applicant.

(c) For the purposes of this section, "principal officers" shall mean president, chief executive officer, treasurer, and chief financial officer, as may be applicable, and any other officer with direct responsibility for the conduct of the applicant's servicing activities in this state.

28118. The commissioner shall, when the application is complete, including having received the information from the Department of Justice, either grant a license pursuant to this division or provide a written explanation for the denial.

28120. (a) The proceedings for a denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commissioner may deny an application for a license for any of the following reasons:

(1) The applicant made a false statement of a material fact on the application.

(2) The applicant or an individual specified in Section 28116 within the last 10 years of the date of application has committed any act involving dishonesty, fraud, or deceit, or has been convicted of, or pleaded nolo contendere to, a crime substantially related to the qualifications, functions, or duties related to servicing.

(3) The applicant or an individual specified in Section 28116 has violated any provision of this division.

28122. (a) The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required by the commissioner or department during an investigation of the application.

(b) The commissioner shall notify the applicant, in writing, that if the applicant fails to submit responsive information no later than 60 days after the date the commissioner sent the written request for information, the commissioner shall deem the application abandoned.

(c) An application fee paid prior to the date an application is deemed abandoned shall not be refunded. Abandonment of an application pursuant to this subdivision shall not preclude the applicant from submitting a new application and fee for a license.

28124. A license shall remain effective until the license is either suspended or revoked by the commissioner or surrendered by the licensee.

CHAPTER 3. LICENSEE DUTIES

28126. (a) A licensee shall notify the commissioner, in writing, of any change in the information provided in the application for a license, as applicable, not later than 10 business days after the occurrence of the event that results in the information becoming inaccurate or incomplete.

(b) (1) If a licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days prior to the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved.

(2) If notice is not given at least 10 days prior to the change of a street address of a place of business, as required by subdivision (b), or notice is not given at least 10 days prior to engaging in the business of servicing student loans at a new location, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).

28128. (a) A licensee seeking to engage in the business of servicing student loans at a new location shall submit an application for a branch office license to the commissioner at least 10 days before engaging in the business of servicing student loans at a new location and pay the fee required by Section 28112.

(b) The licensee may engage in the business of servicing student loans at the new location 10 days after the date of submission of a branch office application.

(c) (1) The commissioner shall approve or deny the person responsible for engaging in the business of servicing at the new location in accordance with Article 2 of Chapter 2 (commencing with Section 28112), and shall notify the licensee of this decision within 90 days of the date of receipt of the application.

(2) If the commissioner denies the application, the licensee shall, within 10 days of the date of receipt of notification of the commissioner's denial, submit a new application to the commissioner designating a different person responsible for engaging in the business of servicing at the new location. The commissioner shall approve or deny the different person as provided in paragraph (1).

(d) A licensee shall not engage in the business of servicing student loans at a new location in a name other than a name approved by the commissioner.

(e) A branch office license to engage in the business of servicing at a new location shall be issued in accordance with this section. A change of street address of a place of business designated in a license shall be made in accordance with Section 28126 and shall not constitute a new location subject to the requirements of this section.

28130. A licensee shall do all of the following:

(a) Develop policies and procedures reasonably intended to promote compliance with this division.

(b) File with the commissioner any report required by the commissioner.

(c) Comply with the provisions of this division and any regulation or order of the commissioner.

(d) Submit to periodic examination by the commissioner as required by this division and any regulation or order of the commissioner.

(e) Advise the commissioner of filing a petition for bankruptcy within five days of the filing.

(f) Provide, free of charge on its Internet Web site, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers and provide this

information or these links to borrowers via written correspondence or email at least once per calendar year.

(g) (1) Respond to a qualified written request by acknowledging receipt of the request within five business days and within 30 business days, provide information relating to the request and, if applicable, the action the licensee will take to correct the account or an explanation for the licensee's position that the borrower's account is correct.

(2) The 30-day period described in paragraph (1) may be extended for not more than 15 days if, before the end of the 30-day period, the licensee notifies the borrower of the extension and the reasons for the delay in responding.

(3) After receipt of a qualified written request related to a dispute on a borrower's payment on a student loan, a licensee shall not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the qualified written request.

(h) (1) Except as provided in federal law or required by a student loan agreement, a licensee shall inquire of a borrower how to apply an overpayment to a student loan. A borrower's direction on how to apply an overpayment to a student loan shall stay in effect for any future overpayments during the term of a student loan until the borrower provides different directions.

(2) For purposes of this subdivision, "overpayment" means a payment on a student loan in excess of the monthly amount due from a borrower on a student loan, also commonly referred to as a prepayment.

28132. (a) A licensee shall not be required to comply with the requirements of subdivision (g) of Section 28130, if the licensee reasonably determines that any of the following apply:

(1) A qualified written request is substantially the same as a qualified written request previously made by the borrower, for which the licensee has previously complied with its obligation to respond pursuant to subdivision (g) of Section 28130, unless the borrower provides new and material information to support the more recent qualified written request. New and material information means information that was not reviewed by the licensee in connection with a prior qualified written request submitted by the same borrower and that is reasonably likely to change the licensee's prior response related to that request.

(2) A qualified written request is overbroad. A qualified written request is overbroad if the licensee cannot reasonably determine from the qualified written request the specific error that the borrower asserts has occurred on his or her account or the specific information the borrower is requesting related to his or her account. To the extent a licensee can reasonably identify a valid assertion of an error or valid request for information in a qualified written request that is otherwise overbroad, the licensee shall comply with the requirements of subdivision (g) of Section 28130 with respect to that valid asserted error or request for information.

(3) A qualified written request is delivered to the licensee more than one year after the licensee sells, assigns, or transfers the servicing of the student loan that is the subject of the qualified written request to another servicer.

(b) If, pursuant to subdivision (a), a licensee determines that it is not required to comply with the requirements of subdivision (g) of Section 28130, the licensee shall notify the borrower of the determination, and the basis for its determination, in writing not later than five business days after making such determination.

28134. (a) If the sale, assignment, or other transfer of the servicing of a student loan results in a change in the identity of the party to whom the borrower is required to send payments or direct any communications concerning the student loan the licensee shall notify the borrower in writing at least 15 days before the borrower is required to send a payment on the student loan of all of the following:

(1) The identity of the new student loan servicer and the number of the license of the new student loan servicer issued by the commissioner.

(2) The name and address of the new student loan servicer to whom subsequent payments or communications are required to be sent.

(3) The telephone numbers and Internet Web sites of the new student loan servicer.

(4) The effective date of the sale, assignment, or transfer.

(5) The date on which the licensee, as the current student loan servicer, will stop accepting payments on the borrower's student loan.

(6) The date on which the new student loan servicer will begin accepting payments on the borrower's student loan.

(b) A licensee shall transfer all information regarding a borrower, a borrower's account, and a borrower's student loan to the new licensee servicing the borrower's student loan within 45 calendar days.

28136. The licensee shall not do any of the following:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead a borrower.

(b) Engage in any unfair or deceptive practice toward any borrower or misrepresent or omit any material information in connection with the servicing of a student loan, including, but not limited to, misrepresenting the amount, nature, or terms of any fee or payment due or claimed to be due on a student loan, the terms and conditions of the student loan agreement, or the borrower's obligations under the student loan.

(c) Misapply payments made by a borrower to the outstanding balance of a student loan.

(d) If the licensee is required to or voluntarily reports to a consumer reporting agency, fail to accurately report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency. For purposes of this subdivision, a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)).

(e) Refuse to communicate with an authorized representative of the borrower who provides a written authorization signed by the borrower, provided the licensee may adopt procedures reasonably related to verifying that the representative is in fact authorized to act on behalf of the borrower.

(f) Negligently or intentionally make any false statement or knowingly and willfully make any omission of a material fact in connection with any information or reports filed with the commissioner, the department, or another governmental agency.

28138. Notwithstanding subdivision (b) of Section 28134 and unless prohibited by federal law, a licensee shall retain and maintain its records of servicing a borrower's student loan for a minimum of three years after the student loan has been sold, assigned, transferred, or paid in full.

28140. A licensee shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

28142. (a) A licensee shall maintain a surety bond in accordance with this section in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers as the result of a licensee's noncompliance with the requirements of this division.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

(c) The commissioner may require a higher bond amount for a licensee based on the dollar amount of servicing of student loans by that licensee.

28144. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the division in the year in which the assessment is made. The pro rata share shall be the proportion that a licensee's servicing activities in this state bears to the costs and expenses remaining after the amount assessed pursuant to subdivision (c).

(b) On or before the 30th day of September in each year, the commissioner shall notify each licensee of the amount assessed and levied against it and that amount shall be paid by October 31. If payment is not made by October 31, the commissioner shall assess and collect a penalty, in addition to the assessment, of 1

percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(c) In the levying and collection of the assessment, a licensee shall neither be assessed for nor be permitted to pay less than two hundred fifty dollars (\$250) per licensed location per year.

(d) If a licensee fails to pay the assessment on or before the 31st day of October, the commissioner may by order summarily suspend or revoke the license issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when the license is revoked or suspended, a licensee shall not engage in the business of servicing student loans in this state pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

28146. (a) A licensee shall file an annual report with the commissioner, on or before the 15th day of March, giving the relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee in the state during the preceding calendar year, including information regarding the number of loans that are sold, assigned, or transferred to another party. The individual annual reports filed pursuant to this section shall be made available to the public for inspection. The report shall be made under oath and in the form prescribed by the commissioner.

(b) A licensee shall make other special reports that may be required by the commissioner.

28148. (a) At the end of the licensee's fiscal year, but in no case more than 12 months after the last audit conducted pursuant to this section, each licensee shall cause its books and accounts to be audited by an independent certified public accountant. The audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements prepared in accordance with generally accepted accounting principles and shall be performed in accordance with generally accepted auditing standards. The audit shall include a reconciliation of the licensee's trust accounts as of the audit date.

(b) “Expression of an opinion” includes (1) an unqualified opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4) an adverse opinion. If a financial statement, report, certificate, or opinion of the independent certified public accountant is in any way qualified, the commissioner may require the licensee to take any action that the commissioner deems appropriate to address the qualification. The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of the rejection and the reason therefor. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiencies. Failure to correct the deficiencies is a violation of this division. The commissioner shall retain a copy of all financial statements, reports, certificates, or opinions so rejected.

(c) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor shall be fully explained.

(d) The audit report shall be filed with the commissioner within 105 days of the end of the licensee’s fiscal year. The report filed with the commissioner shall be certified by the certified public accountant conducting the audit.

(e) If a licensee required to make an audit fails to cause an audit to be made, the commissioner may cause the audit to be made by an independent certified public accountant at the licensee’s expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of the commissioner.

28150. A licensee that ceases to service student loans to borrowers shall inform the commissioner in writing and surrender the license and all other indicia of license to the commissioner. The commissioner may require a licensee to file a plan for the disposition of the servicing business that includes, but is not limited to, a closing audit. Upon receipt of the written notice and plan, if required, the commissioner shall determine whether the licensee has violated this division. The commissioner shall give a licensee notice of accepting a surrendered license, and a license shall not be deemed surrendered until the commissioner accepts its tender in writing.

CHAPTER 4. ADMINISTRATION AND POWER OF THE
COMMISSIONER

28152. (a) As often as the commissioner deems necessary and appropriate, but at least once every 36 months, the commissioner shall examine the affairs of each licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state, the federal government, or other states.

(b) Unless otherwise exempt pursuant to Section 28102, affiliates of a licensee are subject to examination by the commissioner on the same terms as the licensee, but only when reports from, or examination of, a licensee provides documented evidence of unlawful activity between a licensee and affiliate benefitting, affecting, or arising from the activities regulated by this division.

(c) The cost of each examination of a licensee shall be paid to the commissioner by the licensee examined, and the commissioner may maintain an action for the recovery of the cost in any court of competent jurisdiction. In determining the cost of the examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

(d) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

(e) The commissioner shall provide a written statement of the findings of the examination, issue a copy of that statement to the licensee and take appropriate steps to ensure correction of any violations of this division.

(f) Notwithstanding any provision of this division, the commissioner shall have the authority to waive one or more branch office examinations, if the commissioner deems that the branch office examinations are not necessary for the protection of the public, due to the centralized operations of the licensee or other factors acceptable to the commissioner.

CHAPTER 5. ENFORCEMENT

28154. (a) If a licensee fails to do either of the following, the commissioner shall impose a penalty in a sum of up to one hundred dollars (\$100) for every day:

(1) To make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner.

(2) To include therein any matter required by law or by the commissioner.

(b) The commissioner may by order summarily suspend or revoke the license if a licensee fails to file any report required by this division.

28156. (a) The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control of any licensee, or any other person, if the commissioner finds either of the following:

(1) That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the licensee or to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense specified in subdivision (b) of Section 50317, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any servicing.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a licensee and from engaging in any business activity on the premises where a licensee is servicing.

(e) This section shall apply to any violation, conviction, plea, or judgment occurring at any time prior to and after the enactment of this section.

28158. If, after investigation, the commissioner has reasonable grounds to believe that a licensee is conducting business in an unsafe or injurious manner, the commissioner shall, by written order addressed to the licensee, direct the discontinuance of the unsafe or injurious practices. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 28164.

28160. Whenever, in the opinion of the commissioner, a person is engaged in the business of servicing student loans in this state, either actually or through subterfuge, without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (b) of Section 28102.

28162. If, after investigation, the commissioner has reasonable grounds to believe that a licensee is failing to comply with this division or any regulation or order of the commissioner, the

commissioner shall, by written order addressed to the licensee, direct the discontinuance of the failure to comply. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 28164.

28164. (a) No order issued pursuant to this chapter may become final except after notice to the affected licensee of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the licensee that upon receiving a request, the matter will be set for hearing to commence within 15 business days after receipt. The licensee may consent to have the hearing commence at a later date. If no hearing is requested within 30 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without hearing and the licensee shall immediately discontinue the practices named in the order. If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the commissioner shall have all of the powers granted under that act. If, upon the hearing, it appears to the commissioner that the licensee is conducting business in an unsafe and injurious manner or is failing to comply with this division or any regulation or order of the commissioner, the commissioner shall make the order of discontinuance final and the licensee shall immediately discontinue the practices named in the order.

(b) The licensee has 10 days after an order is made final to commence an action to restrain enforcement of the order. If the enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

(c) The commissioner may immediately revoke the licensee's license if the licensee fails to comply with any order issued under this division. The commissioner shall not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.

28166. The commissioner may issue an order suspending or revoking a license if, after notice and an opportunity for hearing, the commissioner finds any of the following:

(a) The licensee is violating this division or a regulation adopted or an order issued under this division.

(b) The licensee does not cooperate with an examination or investigation by the commissioner.

(c) The licensee engages in fraud, intentional misrepresentation, or gross negligence in servicing a student loan.

(d) The competence, experience, character, or general fitness of the licensee, an individual specified in Section 28116, or any person responsible for servicing a student loan for the licensee indicates that it is not in the public interest to permit the licensee to continue servicing student loans.

(e) The licensee engages in unsafe or injurious practice.

(f) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(g) Any fact or condition exists that, if it had existed at the time the licensee applied for the license, would have been grounds for denying the application.

28168. (a) If, after investigation, the commissioner has reasonable grounds to believe that a person has engaged or is about to engage in any act or practice constituting a violation of any provision of this division or any rule or order hereunder, the commissioner may bring an action to enjoin the acts or practices or to enforce compliance with this division or any rule or order adopted under this division. The action shall be brought in the name of the people of the State of California in the superior court. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted. A receiver, monitor, conservator, or other designated fiduciary or officer of the court, which may include the commissioner, may be appointed for the defendant or the defendant's assets. Any other ancillary relief may be granted as appropriate.

A receiver, monitor, conservator, or other designated fiduciary or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties. The powers include the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court,

by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

(b) If the commissioner determines it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief. The ancillary relief may include, but not be limited to, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

28170. (a) If, upon inspection, examination or investigation, based upon a complaint or otherwise, the department has cause to believe that a person is engaged in the business of servicing student loans without a license, or a licensee or person is violating any provision of this division or any rule or order thereunder, the department may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 30 days from the receipt of the citation the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and in all states the commissioner has all the powers granted therein.

(e) After the exhaustion of the review procedures provided for in this section, the department may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the department. The application, which shall include a certified copy of the final order of the department, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

28172. (a) Any person who violates a provision of this division, or any rule or order under this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. This penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

28174. (a) The commissioner may refer the evidence that is available concerning any violation of this division or of any rule or order adopted under this division to the district attorney of the county in which the violation occurred. The district attorney may, with or without the commissioner's referral, institute criminal proceedings under this division. The commissioner and his or her counsel, deputies, or assistants may, upon request of the district attorney, assist the district attorney in presenting the law or facts at the trial.

(b) After an examination, investigation, or hearing under this division, if the commissioner deems it of public interest or advantage, he or she may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.

28176. All hearings provided for in this division shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The commissioner has all the powers granted therein.

CHAPTER 6. MISCELLANEOUS

28178. If any provision of this division or the application thereof to any person or circumstances is held invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this division that can be given effect without the invalid, illegal, or unenforceable

provision or application, and, to this end, the provisions of this division are declared to be severable.

28180. The rights and remedies provided in this division are in addition to any other rights and remedies provided by law.

28182. This division shall become operative on July 1, 2018. The commissioner may take any necessary actions to exercise the authority pursuant to this division to prepare for the July 1, 2018, operative date on and after January 1, 2017.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Section 28152 to the Financial Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

Protecting from public disclosure limited confidential information provided by licensees to the Commissioner of Business Oversight properly balances protecting legitimate private economic interests and public interests in effective regulation.

Approved _____, 2016

Governor